

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of	)	
	)	
Misuse of Internet Protocol (IP)	)	
Captioned Telephone Service	)	CG Docket No. 13-24
	)	
Structure and Practices of the Video Relay	)	
Service Program; Telecommunications Relay	)	
Services and Speech-to-Speech Services for	)	
Individuals with Hearing and Speech Disabilities	)	CG Docket No. 03-123
	)	
To: The Commission	)	

**COMMENTS IN RESPONSE TO  
NOTICE OF PROPOSED RULE MAKING  
ON IP CTS**

**PURPLE COMMUNICATIONS, INC.**

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Purple Communications, Inc. (“Purple”) supports the initial steps taken by the Federal Communications Commission to address the provision and marketing of Internet Protocol Captioned Telephone Service (“IP CTS”).<sup>1</sup> IP CTS is, and will continue to be, an important and popular service among the population of Americans who are hard of hearing and have difficulty using the phone. Unfortunately, certain TRS providers have taken advantage of the Fund by using irresponsible and opportunistic practices that entice people to use the service whether or not they are deaf or hard of hearing. Purple has previously urged the Commission to take strong measures to stop such practices.<sup>2</sup>

Purple appreciates the opportunity to respond to the questions posed in the NPRM, and hereby offers the following comments and suggestions to assist the Commission in its efforts to ensure the long-term viability of both the service and the TRS Fund. Specifically, Purple addresses the following:

(1) Reasons behind the rapid growth of IP CTS: Purple explains that the unprecedented and unusually rapid growth of IP CTS is in part expected based on recent improvements in technology combined with the needs of the growing aging population. However, in part this growth is also due to irresponsible practices by certain providers that the Commission can and should permanently prohibit.

(2) Referral fees: The FCC should, consistent with the interim Order, permanently ban referral fees.

(3) Registration information: Purple agrees that all customer registration information should remain confidential, and urges the Commission to define and adopt a higher level of

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<sup>1</sup> *Order and Notice of Proposed Rulemaking, CG Docket Nos. 10-51 and 03-123, FCC 13-13, Adopted January 24, 2013, released January 25, 2013 (“NPRM”).*

<sup>2</sup> *See, e.g.,* Letter from John Goodman, Chief Legal Officer, Purple Communications, to Marlene H. Dortch, Secretary, Federal Communications Commission (Dec.17, 2012), CG Docket 03-123.

protection for consumer information collected by providers.

(4) Default setting, captions off: The FCC should, consistent with the interim Order, require that equipment and software used in conjunction with IP CTS have a default setting of captions off at the beginning of each call. The FCC should create an exception (and elevated certification standard) for those devices located where the risk of unintended misuse of IP-CTS is exceedingly low.

(5) Labels and Notifications: Purple believes that labels on devices make sense, but that requiring an on-screen notification prior to each use of the phone is burdensome and should not be required.

(6) User Information Should be Kept Confidential: IP CTS providers should be required to maintain the confidentiality of user information and the FCC should apply CPNI-like requirements.

Furthermore, Purple encourages the Commission to uniformly apply any rules that are adopted to both new and existing users of the service, rather than allowing users and providers who have exploited lax rules to continue to benefit from being “grandfathered” under the pre-2013 regulatory framework.

#### (1) GROWTH IN IP CTS MINUTES

IP CTS benefits Americans with hearing loss through advances in technologies that allow more effective communications by telephone. IP CTS can uniquely accommodate deaf and hard of hearing people who also have low vision, because IP CTS allows for caption displays of variable size and contrasting color. In part, IP CTS has experienced recent, rapid growth, because it is able to benefit a larger population than the population that uses other forms of TRS-funded

relay services. The size of the eligible user base and the significant advances in IP CTS technology makes the recent growth in minutes unsurprising.

As also explained below, the rate of growth was also likely accelerated by opportunistic and questionable marketing and distribution practices by certain providers. The FCC has the responsibility to curtail those practices that exploit the TRS Fund and an immature regulatory framework that is consistently trying to catch up to developments in the marketplace.<sup>3</sup>

#### The Size of the American Population that Can Benefit from IP CTS is Greater Than the Population that Uses Other Forms of TRS

The number of deaf and hard of hearing people who utilize sign language as their primary or even secondary mode of communication (typical VRS users) is small in comparison to the larger population of hard of hearing people who typically do not know sign language. This population communicates primarily or exclusively through spoken communications, yet still faces great challenges in successfully hearing conversations over the telephone.<sup>4</sup> The growing number of people in this category is a factor in the increasing use of IP CTS.

#### Technology Advances

Until very recently, IP CTS was neither user friendly nor effective. At the inception of the service, captions delivered by IP CTS hardware and software were inaccurate and slow – lagging behind real-time conversations.<sup>5</sup> Recent technology advancements allowing more

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<sup>3</sup> Such irresponsible practices related to IP CTS are reminiscent of exploitive and anticompetitive practices related to VRS, such as prohibiting videophone users from calling other providers VRS services until the FCC determined such an approach was unlawful; requiring VRS consumers to generate a minimum number of minutes per month or face potential removal of equipment, another loophole later closed by the FCC; threatening customers with the removal of equipment and offering free iPads, televisions and other inducements to entice users to port to their services, an issue still unresolved in the VRS industry.

<sup>4</sup> “Approximately 17 percent (36 million) of American adults report some degree of hearing loss.” National Institute on Deafness and Other Communication Disorders. <http://www.nidcd.nih.gov/health/statistics/Pages/quick.aspx>.

<sup>5</sup> It is important to note that there are still no significant regulations governing quality of service in IP CTS as well as other forms of relay service, despite the fact the service was first authorized by the Commission in 2007.

accurate captioning and less lag time have resulted in a more useful service. One version of Purple's ClearCaptions service, for example, utilizes existing Cisco phones that already widely exist in work environments across the country. This enables deaf and hard of hearing employees to be discreet about their disability and integrates accessible service into existing and routine office equipment, eliminating the need for new, special-purpose devices. And, Clarity's Ensemble phones, in conjunction with Purple's ClearCaptions service, offer precise text and clear (amplified) voice delivered to a telephone with a built-in tablet-based display that creates greater utility through a touchscreen interface and screen dial-pad that is scalable to make calling easier for users with low vision or dexterity challenges. These types of technology improvements can also drive growth in IP CTS.

#### Certain Irresponsible Provider Practices Artificially Drive Growth

Growth of IP CTS can also be attributed to irresponsible marketing practices by certain providers. Examples of such practices are offering free phones without any meaningful check on whether the recipient is hard of hearing, paying others to encourage new user registrations, and sending out phones that are defaulted to captions on. Purple provides further comment below on each of these practices, and encourages the Commission to act aggressively in implementing rules that will put a halt to practices such as these that can open the doors to wrongful use of the service.

#### (2) PROHIBIT REFERRAL FEES

The Commission should absolutely, and permanently, prohibit any referral fees paid by an IP CTS provider to third parties for soliciting registrations for that provider's IP CTS service. Purple shares the Commission's concerns regarding financial incentive programs that offer

rewards for enlisting new IP CTS users.<sup>6</sup> These programs naturally create perverse incentives, and, as the FCC pointed out, may encourage people to sign up for service, even if they do not need IP CTS for effective communications. Purple believes that the Commission's temporary prohibition in the interim Order against financial incentive programs was a good first step, and that this prohibition should now be made permanent.

### (3) REGISTRATION AND CERTIFICATION

Purple does not sell or distribute IP CTS equipment of any kind. Purple licenses its IP CTS technology to existing phone manufacturers who can integrate their existing devices to offer captioning service. Clarity, a Purple licensee, sells its Ensemble phone equipped with Purple's ClearCaptions technology through its distributors, at a retail price of \$229.00 or less. Purple believes that charging a fair market price for an IP CTS device helps to naturally attract only those people who should be using IP CTS for appropriate reasons. Purple supports the Commission's proposed third-party certification requirement for users receiving free or heavily-subsidized IP CTS equipment.

In addition, it is logical and sensible for the FCC to require that an IP CTS device is registered to a user whose identity has been verified by the provider prior to caption calls being initiated on the device. This requirement already exists for all other TRS-funded forms of relay, and Purple sees no reason why IP CTS users should be treated differently.

### (4) EQUIPMENT MUST BE DISTRIBUTED WITH A DEFAULT TO CAPTIONS OFF

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<sup>6</sup> Interim Order at para. 14.

Consistent with previous filings, Purple continues to support a requirement that all existing and new special-purpose IP-CTS enabled phones be subject to a “default-off” requirement to be eligible for reimbursement. Purple strongly believes that for a provider to receive reimbursement from the Fund for IP-CTS minutes, the provider must certify to the Fund Administrator that such minutes were generated from a device that is configured to “default-off”, such that new captions sessions must be initiated with each subsequent call, and is shipped to the customer with such setting enabled. This increased requirement should not, however, be applied to exclusive users of software based IP CTS, given the nature and typical use of such services.

Purple restates its prior position and urges the Commission to adopt an exception to the default-off standard. This exception will provide an elevated degree of certification designed to identify devices that are not exposed to misuse. In its January order, the Commission attempts to balance the “burden on the consumer to simply press a ‘captions on’ button...” against the benefit to the Fund of preventing unintended misuse of the service by ineligible users who access a default-on device that is generally accessible in the home or workplace. Purple disagrees with this standard. Instead, the proper measure should be an evaluation of the effectiveness of the service itself measured against the likelihood of misuse of a given device.

Migration to a default-off standard on certain devices is effective in preventing the misuse of IP CTS by ineligible users. A user who receives free equipment from a provider may not necessarily be eligible for relay service. This user will thus utilize relay service without actually needing or using it because the equipment functions like a regular phone. The user may also place the equipment in settings where other non-eligible users may access and use it.

When captions on that device are set to default-on, and the device is physically located in a manner that permits access to individuals other than the eligible user (if any) in such location, unintended misuse is not only possible, but highly likely. This should not be allowed.

On the other hand, when caption-enabled device is accessed only by eligible and qualified relay users, misuse is unlikely to be used. Such a device would likely be located at a private desk or dedicated extension in the workplace or home office, or in the home of an eligible user who lives alone or only with other eligible users. Such devices are extremely unlikely to be used by anyone other than the registered user (who, in the case of Purple’s Ensemble customers, have paid to purchase the equipment on which captions is enabled, or in the case of Cisco users, have incurred expense to establish the service for qualified employees). We refer to this as a “remote” device.

The second prong of the test the Commission should apply is the impact on the service delivery of a default-off setting. People who use IP CTS hardware typically use this as their primary phone, which means that they will be using the phone to contact IVRs or receiving incoming recorded calls. Because IP CTS calls must connect through a third party, the CA, there is a natural time lag in the process. The connection of the CA, particularly for incoming recorded calls, cannot commence until the user picks up the phone and changes the default “off” setting to “on.” The call routing of IP CTS calls requires a connection to a call center queue, followed by delivery of the call to a remote calling assistant located in that call center who begins captioning one leg of the call upon delivery. This third-party connection results in a delay in the captioning of an inbound or outbound call – and the longer it takes between initiation of the conversation and delivery of the call to a CA, the more conversation is omitted from captions delivered to the eligible user. This is a very material impact to the utility of the service, particularly given the



nature of conversations, and the relative importance of the *initial portion* of any call. A default-off setting delays the delivery of the call to a CA by as much as two times the delay if configured with default-on.<sup>7</sup>

Purple strongly encourages the Commission to allow users whose devices are not generally accessible, and who certify to this fact as well as an obligation to prevent others from using captions, to be allowed to configure their use-isolated or remote devices to run captions in a default-on configuration. Such elevated certification would require a user to certify to the effect that: (a) they understand that the captioning service they access at no additional cost is provided by a live CA dedicated to each of their captioned calls, and reimbursed by the TRS Fund, (b) their device is not accessed by or easily accessible to ineligible users, and (c) they will not permit the use of captions on their device by any ineligible persons.<sup>8</sup>

The increased requirements for user certification (either self-certification or third party certification) should also be made retroactive for all users to ensure that any ineligible user does not continue to exploit this valuable service.

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<sup>7</sup> Purple ran 38 test calls on a 52-word IUR message speaking at 130 words per minute. The test results indicated that there is an approximately five additional seconds delay in a default-off setting (beyond the lag in a default-on setting). Purple's internal sampling suggests that a default-off setting impacts an average call by increasing the omitted portion of the call from approximately 7-15% to approximately 31-48% of the conversation. In a default-on setting on Ensemble phones, the CA was typically able to capture 100% of the incoming recorded calls for a full functionally equivalent experience. However, in a default-off setting, the CA typically missed one-third to one-half of the recorded message, which would be a clear violation of the Commission's required obligation to ensure functional equivalency.

<sup>8</sup> This elevated certification is absolutely necessary to provide users opportunity to avoid the significant erosion in the user experience when the default-off is implemented. The erosion goes beyond mere "inconvenience" to the point of failure to satisfy the functional equivalence requirement for certain kind of calls.. The Commission must ensure that there are rules that will allow users to receive the full functional-equivalence experience, perhaps through the elevated certification proposed by Purple.

(5) LABELS ON DEVICES MAKES SENSE; ON-SCREEN NOTIFICATION PRIOR TO EVERY CALL IS BURDENSOME

Purple has no objection to the Commission's suggestion that each IP CTS device should have a hard label on its face in a conspicuous location specifying that FCC regulations require that captions may be used only by deaf or hard of hearing persons to fully understand phone conversations. Providers should not, however, be held liable for ensuring that the label remains on after delivery to the user.

Purple opposes requiring that such notification be delivered on the caption screen prior to the initiation of a call. In addition to causing further delay in connecting with the CA and causing confusion in the user in distinguishing between the FCC information and the actual captioned conversation, the notification also represents a meaningful disparity in experience between a relay user and a non-relay user. It would be burdensome to require non-relay users to listen to some kind of pre-recorded narrative prior to dial tone every time they pick up the phone. It would be equally burdensome, if not more so, to require such captioned notification to appear on the screen prior to the initiation of any IP CTS call.

(6) KEEP USER INFORMATION CONFIDENTIAL

Finally, Purple encourages the Commission to make permanent the interim rule requiring each IP CTS provider to maintain the confidentiality of user registration and certification information and not to disclose such information except as required by law. Furthermore, Purple renews its recommendation that the Commission specifically apply CPNI-like requirements to

relay providers.<sup>9</sup> There is simply no justification for the personal information of relay users to be subject to any greater risk of mishandling or disclosure than that of non-relay users who provide similar information to ordinary carriers. Certified providers of TRS-funded relay services, including IP CTS, should be held to the same standard of protecting consumer information as other entities similarly situated.

## SUMMARY/CONCLUSION

Purple supports the Commission's efforts to better understand and control the rapid growth of IP CTS, and to ensure its continued availability as a critical service to promote accessibility of communication services. The FCC should enact regulations that prohibit the opportunistic practices of certain providers leading to misuse of the service. At the same time, the FCC must protect the utility of the service for those who truly require it to effectively communicate by telephone. Furthermore, the Commission must regulate the industry through rules that apply to all users (regardless of when they registered for service or received devices), but with narrowly-crafted carve outs that enable effective access by those whose devices present no material risk of misuse.

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<sup>9</sup> See, for example, "*The Commission should formally adopt CPNI rules that prohibit providers from using consumer profile data or call record data without consumer consent for any reason other than completing calls.*" Comments by GoAmerica, Inc., GoAmerica Relay Services, Corp., and Hands On Video Relay Services, Inc. April 8, 2008, CG Docket 03-123.

Respectfully Submitted

A handwritten signature in dark ink, appearing to read 'JGLL', written in a cursive style.

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